

2013 DRAFTING REQUEST

Bill

Received: **10/11/2012** Received By: **jkreye**
 Wanted: **As time permits** Same as LRB:
 For: **Administration-Budget** By/Representing: **Byrnes**
 May Contact: Drafter: **jkreye**
 Subject: **Tax, Other - alcohol and tobacco** Addl. Drafters:
 Extra Copies:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

DOA:.....Byrnes, BB0043 -

Topic:

Roll-your-own cigarettes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/15/2012			_____			
/P1	jkreye 11/9/2012	kfollett 11/12/2012	jmurphy 10/18/2012	_____	lparisi 10/18/2012		State
/P2			jmurphy 11/12/2012	_____	lparisi 11/12/2012		State

FE Sent For:

<END>

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/?	jkreye 10/15/2012						
/P1		kfollett 10/18/2012 1/25/12	10/18/2012 1/25/12		lparisi 10/18/2012		State
FE Sent For:							

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/?	jkreye	1P16f 10/18	gm 10/18	self			

FE Sent For:

<END>

0360

Hanaman, Cathlene

From: Tyler.Byrnes@Wisconsin.gov
Sent: Friday, September 28, 2012 10:56 AM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Frederick, Caitlin - DOA; Byrnes, Tyler - DOA
Subject: [Possible SPAM] Statutory Language Drafting Request
Attachments: RYO - 7035.pdf

Importance: Low

Biennial Budget: 2013-15

Topic: Roll-Your-Own Cigarettes

Tracking Code: BB0043

SBO Team: TLGED

SBO Analyst: Byrnes, Tyler - DOA
Phone: (608) 266-1039
E-mail: Tyler.Byrnes@Wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: High

Intent:

Please change statutes to define organizations that operate roll-your-own machines for public use as cigarette manufactures. Please require the organizations to be subject to the state cigarette tax, including requirements that the cigarettes have tax stamps, and require the manufacturers to pay into the escrow account set up as a provision of the master settlement agreement with cigarette manufacturers that the state is a party to. Please see attached issue paper and drafting instructions.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

**TITLE: STATE REGULATION OF ROLL-YOUR-OWN (RYO) CIGARETTE MACHINES FOR
NON-PERSONAL USE IN WISCONSIN**

DESCRIPTION OF CURRENT LAW AND PROBLEM

Commercial grade automated RYO machines became available in 2009. The Department of Revenue (DOR) estimates there are over 100 of the machines in place at 60-75 retailers across the state. One vendor of the machines has over 1,000 machines in operation nationwide. The growth of this industry and the significant impacts on the sale of cigarette and tobacco products as well as impact on the taxes collected on these products have caused great concern among the federal and state governments and within the tobacco industry. The Alcohol and Tobacco Tax and Trade Bureau (TTB) reports that monthly sales of pipe tobacco increased from 240,000 pounds in January of 2009 to over 3 million pounds in September 2011, while monthly sales of RYO tobacco dropped from 2 million pounds to 315,000 pounds for the same period.

In September 2010, the U.S. Department of the Treasury issued a ruling determining that retailers who make commercial cigarette-making machines available for use on their premises are cigarette manufacturers and are thus subject to the permit and tax requirements of the Internal Revenue Code. Those requirements include: payment of federal excise tax on cigarettes of \$1.01 per pack; packaging the cigarettes with federally required marks and labels, including ingredients and Surgeon General's cigarette health warnings; abiding by the federally required minimum package size for cigarettes; and obtaining a federal permit to engage in the business and filing a security bond.

In October 2010, RYO Machine Rental, LLC, the maker of the RYO Filling Station, sued Treasury over the Sept. 2010 ruling. In December 2010, a federal district court in Ohio issued a preliminary injunction on the enforcement of the Treasury rule, which was not reversed until August, 2012.

After the Treasury ruling, a number of states including Wisconsin began issuing their own enforcement guidelines and notices taking a comparable position that the operation of automated RYO machines in a commercial setting was the manufacture of cigarettes. Among the states adopting this position were AR, CT, IA, IL, MI, NH, and WV. In addition, twelve states have enacted laws, ranging from licensing RYO operators, to requiring payment of the equivalent tax paid on prepackaged cigarettes sold in the state, to outright bans on the operation of commercial cigarette rolling machines. Many other states have been considering legislative proposals, eventually leading to Congressional action amending the Internal Revenue Code to define RYO commercial store operators as tobacco manufacturers under federal law.

Despite the fact that federal legislation was signed into law on July 6, 2012 (Public Law 112-141), it appears that certain persons are engaging in schemes to avoid the federal prohibition on production and sale of cigarettes using RYO machines in commercial settings by characterizing the operation of their machines as "non-profit" corporations, "clubs", "cooperatives" or the like, in order to exploit a perceived loophole in the law. TTB issued a notice on July 25, 2012, saying that they were "not currently processing [tobacco product manufacturer] applications or providing any guidance regarding administration or enforcement of the [Public Law 112-141]

provisions." Additionally, another challenge to the federal law was filed in federal district court in August, 2012.

MSA implications:

In 1998, the attorneys general of 46 states and the four largest U.S. tobacco companies entered into a master settlement agreement (MSA) that provided for the states to receive \$246 billion over 25 years (2000-2025). Wisconsin's share of the settlement funds was initially projected to be more than \$5 billion. Participating manufacturers (PM's) agreed to make annual payments to the states, while the states agreed to pass legislation requiring tobacco products manufacturers to either sign the MSA, or as non-participating manufacturers (NPM's), establish escrow accounts and deposit funds annually, based on the number of cigarettes or amount of RYO tobacco they sold each year in the state. The states are responsible for diligently enforcing the legislation enacted and failure to do so can result in a substantial reduction of the funds allocated to the state from funds deposited by the PM's. The Wisconsin MSA statutes are ss. 995.10 and 995.12, Wis. Stats.

The terms of the MSA also apply to sales of RYO tobacco. For purposes of determining the amount of funds required to be deposited in the escrow account, RYO tobacco is converted into cigarette units sold. The escrow per carton of cigarettes was \$5.65 for cigarettes sold in 2011 and \$5.82 per carton for cigarettes sold in 2012.

These electronic RYO machines have not been available for commercial use previously, and as they are producing cigarettes, their cigarette manufacture becomes subject to the provisions of the MSA. Owners/operators of RYO cigarette machines are unlikely to join the MSA, therefore becoming NPM's, required to make MSA escrow payments. That will pose major new challenges to the state's diligent enforcement of the MSA statutes and threaten a loss of MSA payments. According to the 2012 results of the DHS Tobacco Control Program, Wisconsin has in excess of 7,000 cigarette and tobacco retailers, and if they are allowed to operate RYO machines for commercial use, it would be a tremendous compliance issue, to diligently enforce that all of the RYO machine cigarette production is in compliance with the MSA.

Loose tobacco products are taxed as "other tobacco product" at a much lower tax rate than cigarettes. "Pipe tobacco" is being used by retailers to produce these cigarettes, and is not covered by the Master Settlement Agreement (MSA) payments as required when used as "cigarette roll-your-own" tobacco. Pipe tobacco is also subject to a significantly lower federal tax rate than cigarette tobacco.

RECOMMENDATION FOR ACTION

Amend the sec. 139.30 (7) definition of cigarette manufacturer to include any entity or person who owns an automated roll-your-own machine used to make cigarettes, but excluding any natural person who owns such a machine and uses that machine solely to make cigarettes without compensation for the use of themselves and persons living in their household. Regulate the operation of RYO machines and require RYO operators to comply with the following provisions: obtain a s. 139.34 cigarette manufacturer's permit for each separate premises where a RYO machine is stored or maintained; pay a per cigarette fee equivalent to the tax assessed on pre-packaged cigarettes; use only federal tax-paid RYO tobacco that is listed on the DOJ directory of approved tobacco brands and sell tobacco products to consumers only in packages as sold by the manufacturer; maintain a secure meter that counts the number of cigarettes dispensed by the machine; restrict RYO machines to adult only facilities; and use cigarette tubes and rolling papers compliant with the state's fire-safe cigarette standard.

IMPACT ON JOB CREATION

Without this explicit permitting requirement in statute for RYO machines operating for non-personal use, those operating these machines for non-personal purposes will have an unfair advantage in the marketplace. This results in a direct, negative impact on businesses that are selling cigarettes that were manufactured and taxed according to the letter and spirit of the law.

Persons operating RYO machines would be required to comply with the requirements applying to any cigarette manufacturer, making these sales comparable to the sale and taxation of pre-packaged cigarettes. Home use for personal consumption would still be permitted.

FISCAL EFFECT

The fiscal effect of the proposal is dependent on the status and application of the July 2012 federal law change. Assuming the July 2012 federal law change is in effect and applied, the number of RYO machines being operated in Wisconsin for non-personal use is currently expected to be substantially diminished but not eliminated. Under this assumption, this proposal for state regulation of RYO machines is expected to increase state tax collections by \$2.7 million annually. If, however, the July 2012 federal law change is not in effect, the fiscal effect of this proposal would be higher.

DRAFTING INSTRUCTIONS

Amend the definition of cigarette manufacturer to include any entity or person who owns an automated roll-your-own machine used to make cigarettes, but excluding any natural person who owns such a machine and uses that machine solely to make cigarettes without compensation for the use of themselves and persons living in their household. This definition is found in sec. 139.30(7) pertaining to cigarettes intended for legal resale distribution, in the definition of cigarette vending machines found in sec. 139.30 (14), in the regulation of fire-safe cigarettes in sec. 167.35(1)(f), and in the master settlement agreement provisions of sec. 995.10(1)(i). Amend the definition of "vending machine operator" in sec. 139.30 (15) to include operators of RYO cigarette machines.

EFFECTIVE DATE

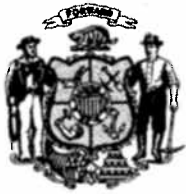
First day of the third month after publication.

INTERESTED/AFFECTED PARTIES

Cigarette and tobacco product manufacturers, distributors, and retailers. Campaign for Tobacco Free Kids, Health First Wisconsin and other public health advocacy organizations.

995.10(1)(i) l. d.

(n),
167.35(1)(f)
4.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0360/P1

JK: *kyf*

DOA:.....Byrnes, BB0043 – Roll-your-own cigarettes

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

*LPS:
Fix
request
sheet
please*

*PWF
Jan 10/18
NDF*

in 10-15-12

D-N

Don't Gen

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, in order to offer cigarettes for sale in this state, a cigarette manufacturer must have a valid permit issued by DOR and pay the cigarette tax on all cigarettes offered for sale in this state. Cigarette manufacturers must also comply with fire safety standards for cigarettes and with the master settlement agreement entered into with U.S. tobacco product manufacturers.

Under this bill, a cigarette manufacturer includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

a

Under current law, a cigarette vending machine operator must have a permit to operate a cigarette vending machine in this state. The bill modifies the definition of "vending machine operator" to include a person who owns an automated roll-your-own machine that is used to make and sell cigarettes on premises which are owned or under the control of other persons.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓

1 **SECTION 1.** 139.30 (7) of the statutes is amended to read:

2 139.30 (7) "Manufacturer" means any person who manufactures cigarettes for
3 the purpose of sale, including the authorized agent of a person who manufactures
4 cigarettes for the purpose of sale. "Manufacturer" includes a person who owns an
5 automated roll-your-own machine that is used to make cigarettes, but does not
6 include an individual who owns a roll-your-own machine and uses the machine
7 solely to make cigarettes for his or her personal use or for the use of other individuals
8 who live in his or her home.

✓

9 History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

9 **SECTION 2.** 139.30 (14) of the statutes is amended to read:

10 139.30 (14) "Vending machine" is any mechanical device which automatically
11 dispenses cigarettes upon the deposit therein of specified coins in payment for such
12 cigarettes. "Vending machine" includes an automated roll-your-own machine used
13 to make cigarettes.

✓

14 History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

14 **SECTION 3.** 139.30 (15) of the statutes is amended to read:

15 139.30 (15) "Vending machine operator" means a person who acquires stamped
16 cigarettes from manufacturers or permittees, stores them and sells them through the
17 medium of vending machines which he or she owns, operates or services and which
18 are located on premises which are owned or under the control of other persons.
19 "Vending machine operator" also means a person who owns an automated

1 roll-your-own machine that is used to make and sell cigarettes on premises which
2 are owned or under the control of other persons.

3 History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

3 **SECTION 4.** 167.35 (1) (f) 4. of the statutes is created to read:

4 167.35 (1) (f) 4. Any person who owns an automated roll-your-own machine
5 that is used to make cigarettes, not including an individual who owns a
6 roll-your-own machine and uses the machine solely to make cigarettes for his or her
7 personal use or for the use of other individuals who live in his or her home.

8 **SECTION 5.** 995.10 (1) (i) 1. d. of the statutes is created to read:

9 995.10 (1) (i) 1. d. Owns an automated roll-your-own machine that is used to
10 make cigarettes, not including an individual who owns a roll-your-own machine and
11 uses the machine solely to make cigarettes for his or her personal use or for the use
12 of other individuals who live in his or her home.

13 **SECTION 9437. Effective dates; Revenue**

14 (1) ROLL-YOUR-OWN CIGARETTE MACHINE. The treatment of sections 139.30 (7),
15 (14), and (15), 167.35 (1) (f) 4., and 995.10 (1) (i) 1. d. of the statutes takes effect on
16 the first day of the 3rd month beginning after publication.

17 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0360/P1dn

JK...

Date

Tyler:

DOR recommended modifying the "vending machine operator" definition under s. 139.30 (15) ✓ to include the roll-your-own machine owner. I followed their recommendation, but I think it may be redundant with the amended "manufacturer" definition contained in the bill. If the roll-your-own machine owner is already required to comply with the law related to cigarette manufacturers, what is DOR gaining by having the same person be a vending machine operator?

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0360/P1dn
JK:kjf:jm

October 18, 2012

Tyler:

DOR recommended modifying the “vending machine operator” definition under s. 139.30 (15) to include the roll-your-own machine owner. I followed their recommendation, but I think it may be redundant with the amended “manufacturer” definition contained in the bill. If the roll-your-own machine owner is already required to comply with the law related to cigarette manufacturers, what is DOR gaining by having the same person be a vending machine operator?

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Byrnes, Tyler - DOA <Tyler.Byrnes@wisconsin.gov>
Sent: Thursday, November 08, 2012 2:52 PM
To: Kreye, Joseph
Subject: LRB-0360/p1 - Roll-your-own cigarettes

Joe,

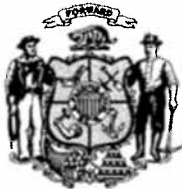
Could we make a couple changes to this draft?

1. Eliminate the Vending Machine Operator language. Its unnecessary under new federal law changes.
2. In the summary section, could we change the line that says "Under this bill, a cigarette manufacturer includes a person who owns an automated roll-your-own machine that is used to make cigarettes" to "Under this bill the statutes are amended to clarify that a cigarette..."
3. Can you insert language in the sections exempting roll-your-own machines owned for private purpose that stresses that individuals who own or operate RYO machines must use the machines at their home or place of residence?

Let me know if you need clarification.

Thanks,

Tyler



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0360/P1
JK:kjf:jm

PM not R

DOA:.....Byrnes, BB0043 - Roll-your-own cigarettes

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

PWP
NDF
Jan 1/12

This bill clarifies current law by
specifying that

Don't Gen

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, in order to offer cigarettes for sale in this state, a cigarette manufacturer must have a valid permit issued by DOR and pay the cigarette tax on all cigarettes offered for sale in this state. Cigarette manufacturers must also comply with fire safety standards for cigarettes and with the master settlement agreement entered into with U.S. tobacco product manufacturers.

Under this bill, a cigarette manufacturer includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

Under current law, a cigarette vending machine operator must have a permit to operate a cigarette vending machine in this state. The bill modifies the definition of "vending machine operator" to include a person who owns an automated roll-your-own machine that is used to make and sell cigarettes on premises which are owned or under the control of other persons.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 139.30 (7) of the statutes is amended to read:

139.30 (7) "Manufacturer" means any person who manufactures cigarettes for the purpose of sale, including the authorized agent of a person who manufactures cigarettes for the purpose of sale. "Manufacturer" includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

SECTION 2. 139.30 (14) of the statutes is amended to read:

139.30 (14) "Vending machine" is any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes. "Vending machine" includes an automated roll-your-own machine used to make cigarettes.

SECTION 3. 139.30 (15) of the statutes is amended to read:

139.30 (15) "Vending machine operator" means a person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them through the medium of vending machines which he or she owns, operates or services and which are located on premises which are owned or under the control of other persons. "Vending machine operator" also means a person who owns an automated roll-your-own machine that is used to make and sell cigarettes on premises which are owned or under the control of other persons.

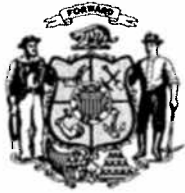
in his or her home

167.35 (1) (f) 4. Any person who owns an automated roll-your-own machine that is used to make cigarettes, not including an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

995.10 (1) (i) 1. d. Owns an automated roll-your-own machine that is used to make cigarettes, not including an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

(1) ROLL-YOUR-OWN CIGARETTE MACHINE. The treatment of sections 139.30 (7), and (15), 167.35 (1) (f) 4., and 995.10 (1) (i) 1. d. of the statutes takes effect on first day of the 3rd month beginning after publication.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0360/P2

JK:kjf:jm

DOA:.....Byrnes, BB0043 - Roll-your-own cigarettes

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, in order to offer cigarettes for sale in this state, a cigarette manufacturer must have a valid permit issued by DOR and pay the cigarette tax on all cigarettes offered for sale in this state. Cigarette manufacturers must also comply with fire safety standards for cigarettes and with the master settlement agreement entered into with U.S. tobacco product manufacturers.

This bill clarifies current law by specifying that a cigarette manufacturer includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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SECTION 2. 167.35 (1) (f) 4. of the statutes is created to read:

167.35 (1) (f) 4. Any person who owns an automated roll-your-own machine that is used to make cigarettes, not including an individual who owns a roll-your-own machine and uses the machine in his or her home solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

SECTION 3. 995.10 (1) (i) 1. d. of the statutes is created to read:

995.10 (1) (i) 1. d. Owns an automated roll-your-own machine that is used to make cigarettes, not including an individual who owns a roll-your-own machine and uses the machine in his or her home solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.

SECTION 9437. Effective dates; Revenue.

(1) **ROLL-YOUR-OWN CIGARETTE MACHINE.** The treatment of sections 139.30 (7), 167.35 (1) (f) 4., and 995.10 (1) (i) 1. d. of the statutes takes effect on the first day of the 3rd month beginning after publication.

(END)